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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	

COMMENTS OF CABLE & WIRELESS, INC.

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## SUMMARY

Cable & Wireless, Inc. ("CWI") is among the seven largest interexchange carriers in the U.S., with revenues of \$800 million per year. CWI also has begun to offer other integrated telecommunications services to its customers, including Internet access, private line services and, most recently, basic local exchange service. CWI strongly believes reform of the access charge system is necessary to adjust regulation to the rapidly changing nature of the competitive marketplace. CWI applauds the Commission's decision to undertake this effort expeditiously.

The guiding principles of access charge reform must be to ensure (1) that access charges reflect the way the price cap incumbent local exchange carriers ("ILECs") incur costs and (2) that access rates move toward the forward-looking, long run incremental costs of providing the service according to a definite schedule. The following changes to the access charge system would advance these principles significantly.

*First*, the current per-minute assessment of the carrier common line ("CCL") charge should be abandoned and replaced by a flat-rate pre-subscribed line ("PSL") charge. It is virtually beyond dispute that local loop costs are not traffic-sensitive. By pricing this element on a non-usage basis, the rate structure will be brought into line with the way the costs are incurred, promoting competition and new entry. Other alternatives, such as bulk billing of the CCL, are far less effective because they represent nothing more than different ways to collect CCL costs on a usage-sensitive basis or otherwise fail to reflect the costs as they are incurred.

In moving to a flat-rate PSL assessment, the Commission should *not* raise the subscriber line charge ("SLC") rate cap for multi-line business and certain residential customers. By adopting the flat-rate PSL charge advocated by CWI, the Commission can make local loop charges reflective of their costs in a competitively neutral fashion without the consumer concerns raised by higher SLC charges.

*Second*, local switching charges should be bifurcated to reflect the different traffic-sensitive and non-traffic-sensitive ("NTS") local switching costs. CWI agrees with the Commission that rates to recover NTS local switching costs (*e.g.*, dedicated line cards, customer-specific ports and distribution frames) should be priced on a flat per-line card or per-trunk port charge. For shared local switching functions, per-minute rates should continue to apply. In the case of price cap ILECs, the Commission should determine the minimum proportion of local switching costs that should be placed in the NTS categories. Based on evidence submitted to the Commission in other proceedings, CWI believes that as many as one-half of local switching costs are non-traffic-sensitive.

The Commission should not, however, create a call set-up element for local switching, nor should it implement peak/off-peak pricing. The incremental costs of call set-up, even for short duration calls, are *de minimis* and do not merit a separate charge. Peak/off-peak pricing is simply too problematic to implement because of difficult definitional issues and due to differing (and constantly changing) patterns usage.

*Third*, interexchange carriers should continue to have the option of purchasing tandem switched transport pursuant to the "unified" rate structure now in place. The reasons that motivated the Commission to adopt that approach three years ago are equally valid today.

Tandem switched transport is a service, not a facility, and should be priced accordingly. Moreover, the costs and architecture of the local transport network are determined by ILEC decisions almost wholly unrelated to interexchange usage. Were the Commission to require tandem access customers to pay for the serving wire center-to-tandem link on a flat-rate basis, the FCC would be encouraging uneconomic reconfigurations. Similarly, peak/off-peak pricing is not appropriate for tandem switching charges.

*Fourth*, the transport interconnection charge ("TIC") must be reduced and, ultimately, eliminated. The TIC was created to provide ILECs with "revenue neutrality," a concept relevant only in a monopoly environment. Businesses subject to effective competition do not have the ability to react to cost increases in one area by simply charging customers more in another. As local telecommunications moves toward competitiveness, revenue neutrality has lost its vitality as a valid regulatory objective.

Until the TIC is eliminated, its reform should observe certain principles. These include: (1) equalizing the amount of overhead per unit of traffic assigned to each of the transport options; (2) allocating costs recovered by the TIC formerly associated with the tandem switching revenue requirement to other elements since tandem switching rates more than recover the direct economic cost of tandem switching; (3) allocation to direct trunked transport of the costs of DS1:DS0 multiplexing; (4) realignment of DTT and special access rates; and (5) removal of central office equipment maintenance expenses.

*Fifth*, the Commission should rely on the "prescriptive" approach to access reform in implementing these changes, bringing access rate levels in line with long run incremental costs, and as a basis for giving price cap ILECs greater pricing flexibility. This method will

provide much greater certainty in the pace and direction of access reform. CWI believes that this added certainty will make the prescriptive approach less contentious, and thus less "regulatory," than the so-called marketplace method.

In marketing its prescriptive decisions, the Commission should require a total-service long-run incremental cost- ("TSLRIC") based cost methodology. The ultimate goal of the prescriptive approach would be to bring prices in line with TSLRIC plus a reasonable allocation of forward-looking joint and common costs. Although some ILECs likely will claim that TSLRIC studies will be too costly or time-consuming, the already completed TELRIC cost analyses provide a starting point which will make TSLRIC studies relatively easy to prepare.

*Finally*, CWI believes that any plan to allow ILECs to recover costs that cannot be identified explicitly as a cost of universal service or as being TSLRIC-based should be competitively neutral in impact and should be phased out promptly. For example, an X-factor could be increased incrementally each year for five years, at which time any remaining embedded costs or depreciation reserve deficiency would have to be recovered through some independent means.

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**COMMENTS OF CABLE & WIRELESS, INC.**

Cable & Wireless, Inc. ("CWI"), by its attorneys, and pursuant to Section 1.415 of the Commission's Rules, hereby provides its comments on the Notice of Proposed Rulemaking in CC Docket No. 96-262 ("Notice").<sup>1</sup>

CWI applauds the Commission's effort to address in a timely fashion the extremely complex but highly important issues affecting the emergence and growth of competition in all telecommunications markets. For several years, the Commission has been aware that reform of its interstate access charge system would be needed to bring it into full conformance with a local competitive paradigm. Passage of the Telecommunications Act of 1996<sup>2</sup> gave an

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<sup>1</sup> *Access Charge Reform et al.*, CC Docket Nos. 96-262 *et al.*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, FCC 96-488 (rel. Dec. 24, 1996).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 *et seq.* ("1996 Act").

added urgency to this need for reform. Certainly now, with the Regional Bell Operating Companies ("RBOCs") authorized to offer out-of-region and incidental interLATA services and, in one case already, seeking approval for in-region interLATA service, the reform of the access charge system should be delayed no further. CWI welcomes this opportunity to comment on the issues raised in the *Notice*.

Access charges represent the largest set of costs facing a provider of interexchange services. As explained in greater detail below, from CWI's perspective the single greatest deficiency of the interstate access charge system today has been the failure of the access rate structure to reflect the underlying costs of providing the service. Of course, the rate structure could never be perfected and micro-managed to achieve economic purity on every level. However, the FCC should, in this proceeding, reform the rate structure in two general ways. First, in several instances access charges under the current system do not reflect the manner in which costs are incurred. The two most notable examples are the charges for Carrier Common Line ("CCL") and for Local Switching. Currently, the CCL and Local Switching charges are assessed on a per-minute basis, although there is near unanimous agreement that all the loop costs and a portion of the local switching costs they are designed to recover are, in fact, non-traffic sensitive.

Accordingly, the Commission should build upon the record it developed in CC Docket No. 91-213 in the establishment of non-traffic sensitive rate elements for recovery of non-traffic sensitive costs. In that instance, the Commission ordered that certain elements on the trunk side of the incumbent local exchange carrier ("ILEC") networks, specifically, charges for entrance facilities and direct trunked or dedicated transport ("DTT") be non-

traffic sensitive.<sup>3</sup> At this time, the Commission should modify the rate structure to require ILECs to recover the appropriate level of network costs on the line-side of the ILEC networks, specifically of CCL and local switching costs in the manner in which they are incurred.

Second, the Commission should take clear steps toward ensuring that access charge rate levels more closely reflect the underlying costs of providing access as viewed in a competitive environment. Access charges are the single largest cost-input to the provision of interexchange service. The choice of how to regulate such charges thus will have a profound impact on interexchange competition. Access charges contain numerous subsidies, excessive overhead, and embedded costs, which can distort marketplace information and impede efficient decisions by carriers. The Commission can, and should, take unambiguous steps to remove these subsidies from access charges -- or properly allocate them -- so that the charges better reflect the levels of the ILECs' direct economic costs in providing access. Putting access charges in line with costs will ensure that both interexchange carriers and new access and local exchange providers have the appropriate incentives to make economically efficient decisions and will encourage access service competition. A failure to bring access charge structures and rates in line with costs would retard the emergence of new competitors, resulting finally in a failure to bring new services to end users, and a failure to achieve the goals of the 1996 Act.

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<sup>3</sup> CWI does not mean to imply agreement that the *prices* set under that rate structure were reasonable. In CWI's view, defining the rate structure is merely the first step. A generally well-designed rate structure does not comprehensively ensure that the prices set under the structure will be reasonable and non-discriminatory.

## I. STATEMENT OF INTEREST

As the telecommunications environment undergoes massive change, the Commission must not lose sight of one of its most important missions, namely to promote the competitive provision of services. With anticipated revenues of nearly \$800 million dollars in 1996, CWI ranks as one of the seven largest domestic interexchange carriers ("IXCs") in the nation. CWI also provides switched and private line data and voice communications, Internet access and basic local exchange service. Moreover, the company has experienced double-digit growth for the last five years. CWI has over 2,000 employees nationwide.

The importance of this proceeding to IXCs like CWI cannot be overstated. The merging of the interexchange and local telecommunications markets into a single "one stop shopping" arrangement will populate the resulting integrated market with several financial behemoths. The three largest interexchange carriers collectively hold about 80 percent of that market (AT&T 53.7%, MCI 17.9%, Sprint 8.7%) and have interexchange revenues of approximately \$56 billion (AT&T has revenues of \$38 billion, MCI \$13 billion, and Sprint \$7.3 billion).<sup>4</sup> Moreover, the 1996 Act established conditions for entry into the interexchange business, both out-of- and in-region, by the seven Regional Bell Operating Companies ("RBOCs"). One RBOC, Ameritech, has already filed for in-region authority. The RBOCs have collective revenues of over \$74 billion and control 78 percent of all U.S. telephone access lines, including virtually all access lines within their respective service areas.<sup>5</sup> The RBOCs carry more than 98 percent of all interexchange access minutes from

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<sup>4</sup> FCC Industry Analysis Division, *Long Distance Market Shares: Third Quarter, 1996* (January 1997), Tables 5 (1995 Toll Revenues) and 6 (Market Share 3Q 1996).

<sup>5</sup> *FCC Statistics of Communications Carriers*, Tables 2.5 and 2.9 (1995-96).

those lines. Despite the spate of arbitrations between RBOCs, GTE, and other ILECs, on the one hand, and competitive access providers and new local entrants, on the other, access and local exchange services today largely continue to be monopoly services.

Despite its much smaller size relative to AT&T, MCI, and Sprint, CWI has been able to compete successfully in the *long distance* market, in large measure due to effective and appropriate regulatory policies that reduced historical barriers to entry and limited potential anti-competitive behavior by entities that were vastly larger, controlled bottleneck facilities, or both.<sup>6</sup> Due to the crucial nature of access as an input to interexchange services, the Commission has adopted policies meant to ensure that the market share of the largest interexchange carriers (purchasers of access), coupled with LEC control of bottleneck access facilities (vendors of access), would not result in access products and pricing which would unfairly benefit larger carriers, stifling interexchange competition in the process. In order to avoid such results, the Commission has pursued access charge structures based upon cost, with particular concern that any discounts or other deaveraging of price be based upon demonstrable differences in cost.<sup>7</sup>

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<sup>6</sup> See, e.g., *Bell System Tariff Offerings*, 46 F.C.C. 2d 413, *aff'd sub nom*, *Bell Tel. Co. v. FCC*, 503 F.2d 1250 (3d Cir. 1974), *cert. denied sub nom*, *ATT v. FCC*, 422 U.S. 1026 (1975) (interconnection); *Resale and Shared Use of Common Carrier Services and Facilities*, 83 F.C.C. 2d 167 (9180) (MTS and WATS resale); *MTS and WATS Market Structure, Phase III*, 100 F.C.C. 2d 860 (1985) (equal access required of all LECs); *American Telephone and Telegraph Co.*, 94 F.C.C. 2d 545 (1983) (granting waiver from Part 69 requirements to allow implementation of MFJ's equal charge per minute rule); *Transport Rate Structure and Pricing*, 7 FCC Rcd 7006 (1992) ("Local Transport Order") (first order restructuring local transport rate structure) (subsequent history omitted).

<sup>7</sup> *Expanded Interconnection with Local Telephone Facilities*, 7 FCC Rcd 7369, 7454 (1992) (special access zone density pricing); *Expanded Interconnection with Local Telephone* (continued...)

In the current marketplace, the Commission faces new challenges if it is to promote vigorous competition that ensures that smaller carriers such as CWI continue to be able to compete in the interexchange market successfully. It is imperative, of course, that access charge reform continue to promote cost-based rate structures.<sup>8</sup> However, with the ILEC's newfound ability to expand into the long distance market, the Commission should give increased attention to access price levels relative to their direct or incremental costs. In addition, the financial size of the RBOCs, combined with their near total monopoly power over the local exchange, poses a formidable challenge to the Commission as it endeavors to reform access consistent with the underlying goals of the 1996 Act. The FCC must take steps to bring rate levels for access as close as possible to ILECs' total service long run incremental costs (plus a reasonable allocation of shared and common costs) to prevent anticompetitive behavior by ILECs' in favor of affiliated interexchange operations.

The Commission's effectiveness in this effort will determine, in large part, whether smaller interexchange competitors, like CWI, can continue to compete successfully in the long distance market, even as they enter the local exchange market, and thereby ensure their long-term business viability and a competitive telecommunications environment in general.

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<sup>7</sup>(...continued)

*Facilities*, 9 FCC Rcd 5154, 5204 (1994) (volume discounts for special access and, subject to the presence of competition, switched transport).

<sup>8</sup> This includes the relationship among rate options, such as direct-trunked and tandem switched transport rate options. Because larger IXCs such as AT&T order almost all of direct-trunked switched access, whereas smaller IXCs rely mostly on tandem switched transport, the relationship among these options can have a significant impact on smaller IXCs' ability to compete.

CWI sets forth herein its initial comments on the *Notice* and its general proposals on how access charges should be reformed to meet the goals described above. While CWI does not respond to all aspects of the *Notice*, it anticipates reviewing the initial comments of other interested parties closely and will address additional issues that were not covered in its replies.

**II. CERTAIN ASPECTS OF THE EXISTING RATE STRUCTURE SHOULD BE MODIFIED TO ENSURE THAT ACCESS CHARGES REFLECT THE WAY ILECs INCUR COSTS**

One of the Commission's goals has been to establish an access charge rate structure wherein charges reflect the manner in which costs are incurred. This was achieved in part in CC Docket No. 91-213, which addressed the cost of access transport. Entrance facilities and dedicated or direct-trunked transport, clearly non-traffic sensitive elements but formerly under the usage-based "equal charge per minute" rule, are now paid for through flat-rate charges.

However, while CC Docket No. 91-213 represented a good first structural step to access charge reform of the trunk side of the ILEC networks, it did not resolve all of the issues satisfactorily. Restructuring on the line side of the ILEC networks was simply beyond the scope of that proceeding. For example, very significant portions of the ILEC access networks, most notably, non-traffic sensitive ("NTS") loop and local switching port costs, continue to be collected through usage-based charges.

Other issues were only partially resolved in the *Local Transport* proceeding due to the limited information available to the Commission regarding the local exchange carriers' long run incremental costs. The per-minute Transport Interconnection Charge ("TIC") assessed

on all interstate access traffic was intended to be a transitional rate element and was adopted to maintain revenue neutrality. The TIC includes many categories of costs that are more appropriately directly assigned to specific access rate elements or even outside the access framework entirely. Accordingly, the *Notice* requests comments and possible cost showings from the parties.

The *Notice* also recognizes that other access charge elements may still contain other embedded costs or costs associated with a depreciation reserve deficiency.<sup>9</sup> Further, the FCC must take steps to ensure that access rate levels are brought closer to the local exchange carriers' direct economic costs, so as to remove any uneconomic advantages to one set of IXC carriers over another and to allow access and local exchange competition to evolve. For example, all forms of transport, both dedicated and tandem, must be priced consistently relative to long run incremental costs to ensure that DTT users do not pay less overhead than tandem switched transport users. In addition, the rate for tandem switching should not be burdened by an inordinate share of overhead, embedded costs, or subsidies.

The FCC must address how to remove these uneconomic costs from access charges. By ensuring that prices better reflect true underlying cost levels, and that rate structures reflect the manner in which costs are incurred, the Commission will take important steps toward promoting economic decisions by both access competitors and interexchange carriers, in turn furthering competition in access, local exchange, and interexchange services. In

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<sup>9</sup> In addition, revenues that historically have been collected from access customers that are more properly associated with universal service support should be removed from the access charge framework entirely and recovered in an explicit and nondiscriminatory manner pursuant to the decisions to be reached in the Commission's *Universal Service* proceeding.

short, successful access reform should lead to greater competition in multiple telecommunications markets to the benefit of consumers.

CWI presents its views on the proper treatment of the CCL charge, local switching, and the TIC, as well as other rate-structure-related issues below.

**A. The Carrier Common Line Charge Should Be Made a Flat-Rate Charge (¶¶ 57-70)**

As the Commission observes in the *Notice*, common line costs associated with the local loop are not traffic-sensitive. These costs, to the extent they are assigned to the interstate jurisdiction, are today recovered only partially through the flat-rate charge subscriber line charge ("SLC"). The remainder of these costs have been recovered through per-minute charges, *i.e.*, the carrier common line ("CCL") charge. The CCL charge is assessed on access customers, such as CWI, for the origination and/or termination of interstate access traffic.

Usage-based charges for non-traffic sensitive services create incentives for IXCs to bypass the switched access network to serve large end user customers with special access or other private line services, when in reality it may not be economically efficient to do so. As NYNEX explained in its 1993 Petition for Waiver of the FCC's switched access rules, "the recovery of the NTS costs associated with end user lines through usage-based switched access rates" causes uneconomic bypass and more than optimal use of special access services

by large users.<sup>10</sup> Accordingly, the current CCL charge rate structure sends improper pricing signals, frustrating efficient and full use of the ILECs' or new entrant's networks.

To rectify this situation, CWI urges the FCC to eliminate the per-minute CCL charge immediately. In its place, the Commission should require the ILECs to recover the costs of the local loop assigned to the interstate jurisdiction, to the extent these costs are not recovered by the SLC, through a flat, pre-subscribed line ("PSL") charge assessed against each customer's interLATA pre-subscribed IXC ("PIC"). *See Notice* ¶ 60.

The Commission should not adopt any of the other alternatives to per-minute recovery of interstate NTS loop costs outlined in the *Notice*. (*Notice* ¶ 61.) "Bulk billing," in which carriers are assessed a charge based upon their percentage share of interstate minutes of use or revenues, is simply another still more-distorted variation of per-minute recovery. Certainly, it no more accurately reflects costs than the current inefficient recovery mechanism. Similarly, charges based upon the aggregate number of IXC trunks or ports on the Serving Wire Center side of the local switch are not as appropriate as a per-line charge because, again, they do not reflect as directly the individual *loop* costs incurred by the ILEC for each end user.

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<sup>10</sup> The NYNEX Telephone Companies re Petition for Waiver, Transition Plan to Preserve Universal Service in a Competitive Environment, DA 93-1537, at 34-35 (filed Dec. 15, 1993) ("NYNEX USPP Petition").

**B. The Commission Should Not Raise or Eliminate the SLC Price Cap for Multi-Line Business and Certain Residential Customers**

The *Notice* also proposes to increase or eliminate the cap on the SLC for two categories of lines: the second and additional lines of residential customers, and all lines of multi-line business customers. (*Notice* ¶ 65.) The impetus for this proposal is the conclusion of the Federal-State Joint Board on Universal Service that end-user customers of multi-line business and multiple-line residential services do not necessarily make large numbers of toll calls. Since the loop costs not recovered through the SLC are currently recovered through the per-minute CCL charge, the Joint Board deduced that the purported lighter toll usage of multi-line services leads to a smaller contribution to interstate line cost recovery from these lines. As a result, as the argument goes, these lines may not be contributing their fair share to loop cost recovery.

As explained above, CWI supports a flat-rate, per-line PSL charge. If the per-line charge is adopted, all loop costs not recovered through the SLC will be recovered through a recalculated PSL charge that applies equally to all pre-subscribed lines. By restructuring the CCL charge, as CWI proposes, the Commission can ensure that all interstate loop costs not recovered through the SLC are recovered in a competitively neutral fashion without the need to increase the SLC for any lines.

This plan would create an efficient cost recovery mechanism without the harm to consumers caused by raising the SLC for multi-business lines and additional residential lines -- or even all end users. Moreover, because the prospect of raising the SLC is certain to become a matter of considerable controversy, it could delay the adoption of access reform unnecessarily, hence delaying the advent of local exchange competition.

**C. The Local Switching Charge Should Be Bifurcated To Reflect NTS and Traffic Sensitive Costs (¶¶ 71-79)**

**1. Treatment of non-traffic sensitive costs.**

All costs associated with local switching currently are recovered under Part 69 rules through per-minute charges. As the Commission correctly observes, many of the costs of local switching are non-traffic sensitive. (*Notice* ¶ 72.) Such NTS costs include those associated with dedicated line cards and customer-specific trunk-side ports and distribution frames. Accordingly, CWI agrees with the Commission that a monthly flat-rate per-line-card or per-trunk port charge should be established for these functions. Non-traffic sensitive charges will bring local switching rates more in line with the way ILECs incur costs and will be more competitively neutral. Making local switching charges non-traffic sensitive to the maximum extent feasible will also stimulate competition because new entrants will incur their costs on a per port or per card basis.

However, some portion of local switching functions are apparently shared among services, such as the CPU function of the switch, non-customer specific trunk-side ports, and the cross-connect fabric. (*Notice* ¶ 73.) For the recovery of these costs, per-minute rates should continue to apply, since this better reflects the manner in which these costs are incurred.

CWI submits that the Commission should adopt, based on the record established in this proceeding, a specific minimum percentage of local switching costs to be recovered through non-traffic sensitive costs. The Commission has already received some evidence on this in the *NYNEX USPP Petition*. In its Petition, NYNEX stated that, for more modern

switches, as much as 49 percent of local switching costs are non-traffic sensitive.<sup>11</sup>

Accordingly, CWI proposes that the FCC require the price cap ILECs to recover at least 49 percent of their local switching costs through flat-rate charges.

**2. Per-call set-up charge.**

The *Notice* seeks comment on whether the rate structure should include a per-call set-up charge. (*Notice* ¶ 76). CWI believes that a per-call set-up charge for interstate access is unnecessary. While it is true that some switching costs are incurred on a per-call basis, the costs of call set-up relative to traffic sensitive switching costs are too small to justify the establishment of a new local switching rate element to recover them on an unbundled basis. This relative cost disparity is true even for calls of short duration, for which call-set-up costs would represent a larger percentage of overall switching costs. While CWI believes as a general matter that the FCC should modify the rate structure to ensure that costs are recovered in the manner in which ILECs incur them, the Commission should not lose sight of the bigger picture. Here, where there may be a minimal dislocation of "economically pure" cost recovery by calls of long duration in favor of calls of short duration, CWI submits that such dislocation is *de minimis*. Further, such dislocation would be offset by the increased complexity in the rate structure and any associated implementation expenses.<sup>12</sup>

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<sup>11</sup> *NYNEX USPP Petition, supra*, Exhibit 11, p. 8 n.3. and Att. A.

<sup>12</sup> To the degree that the Commission chooses to recognize the cost of call set-up, any such costs should properly be represented in the signalling basket.

### 3. Time of Day Pricing.

In addition, the *Notice* inquires whether the rate structure should be modified to provide for peak/off peak pricing. CWI submits that LECs should neither be required nor allowed to implement peak/off-peak pricing for local switching. The record in the *Local Competition* proceeding, CC Docket No. 96-98, made clear that identifying the distinction between peak and off-peak pricing is beset with numerous practical difficulties:<sup>13</sup>

- Different parts of the network may have different peak periods; specifically among different geographic portions of the network;
- Further, it is unclear how time of day should or could be distinguishable for the "interstate access" ILEC network vs. the overall ILEC network;
- Peak periods will change over time if customers change calling patterns as a result of peak/off-peak pricing;
- Peak periods are likely to change as a result of Internet usage, which is on the rise;
- The duration of the "peak" period is something of an arbitrary exercise, as it has no clear, nonarbitrary boundary;
- The entry of new LECs may change calling patterns and ILEC switch usage; and
- The administration of peak/off-peak pricing would be burdensome because of the need to revisit definitional issues repeatedly.

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<sup>13</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶ 756 ("Local Competition Order"), Order on Reconsideration, CC Docket No. 96-98, 11 FCC Rcd 13042, petition for review pending and partial stay granted, *sub nom. Iowa Utilities Board et al. v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Oct. 15, 1996), partial stay lifted in part, *Iowa Utilities Board et al. v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Nov. 1, 1996).

For reasons such as these, the Commission declined to require peak/off-peak pricing for local switching in the *Local Competition Order* (¶ 757). It should do the same here.

**D. IXCs Should Continue to Have the Option to Purchase Tandem Switched Transport Pursuant to the Unified Structure (¶¶ 87-91)**

Under the current rate structure, IXCs have two pricing/product options for tandem switched transport. First, an IXC can purchase tandem-switched transport on a usage- and distance-sensitive basis between the serving wire center ("SWC") and the end office, the so-called unitary rate structure. In this case, mileage is measured between the SWC and end office on a direct, "air-mile" basis. Second, an IXC can purchase Direct Trunked Transport between the SWC and tandem office, and Tandem Switched Transport between the tandem and end offices, the so-called partitioned rate structure. Mileage for the tandem-end office trunk is measured separately from the distance for the SWC-tandem portion.<sup>14</sup>

The Commission asks whether the first option should continue to be available to the IXCs. (*Notice* ¶ 87.) CWI believes strongly that it should. The FCC determined only two years ago that the unified rate structure facilitated full and fair interexchange competition.<sup>15</sup> Further, the Commission believed that the interim structure, including Tandem Switched

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<sup>14</sup> *Notice* ¶ 87. The *Notice* asks whether ILECs should be able to offer transport services differentiated by whether the LEC or the IXC is responsible for channel facility assignments. (*Notice* ¶ 86.) The Commission has granted waivers for the LECs to offer such services, such as that allowing Bell Atlantic to provide its Facilities Management Service. CWI believes that the LECs' ability to make assignment uses facilities more efficiently and should be reflected in a lower transport price than when IXCs make the assignments.

<sup>15</sup> *Transport Rate Structure and Pricing*, Third Memorandum Opinion and Order on Reconsideration, 10 FCC 3030, 3048 (1994) (subsequent history omitted).

Transport, allowed the IXCs time to prepare for a fully cost-based rate structure by reconfiguring their networks.<sup>16</sup>

The arguments against a mandatory partitioned Tandem Switched Transport rate structure are the same today as they were three years ago, and are equally valid. First, unlike unbundled network elements, which are, by definition, offered on a piece-part basis, access transport is still a *service*, which ILECs have traditionally offered on an end-to-end basis (*i.e.*, SWC to end office). The partitioned rate structure is essentially an unbundling of TST, and blurs the distinction between service and network elements.

Second, the "propriety" of the partitioned structure, to the extent it exists, is an incidental by-product of the way that ILECs historically constructed their monopoly end office networks. Access customers had no control over the costs, number, or locations of tandem switches. Conversely, ILECs have deployed tandems for many reasons beyond attempting to maximize interstate access traffic concentration, including local exchange service, intraLATA toll, and intrastate access.<sup>17</sup> Accordingly, purchasers today should not be required to pay for those ILEC decisions, except as provided for by the unified structure. By doing otherwise, the Commission could create incentives for inefficient network reconfigurations by IXCs. Alternatively, the FCC, if it mandates the partitioned rate structure as the sole form of Tandem Switched Transport, would have to consider new rules

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<sup>16</sup> *Id.*

<sup>17</sup> Petition for Expedited Rulemaking of WilTel, Inc., RM-8775 (filed June 11, 1992) at 14-20 ("WilTel Petition").

and procedures to regulate LEC tandem deployment decisions, much as WilTel, Inc., proposed in 1992.<sup>18</sup>

Furthermore, AT&T, by virtue of divestiture, inherited an infrastructure which includes a point of presence in close proximity to a significant number of tandem switches. This is noteworthy because AT&T, despite its heavy use of DTT for the majority of its access traffic, is the largest user (in terms of total minutes) of Tandem Switched Transport because of its overwhelming size. If the FCC mandates a partitioned structure, AT&T would receive a significant legacy advantage over its competitors.

Not only should the per-minute Tandem Switched Transport option be retained in its present form with two pricing options, but the Commission should not mandate, or even permit, peak/off-peak pricing for tandem-switching. As with local switching, the definitional problems with peak/off-peak tandem switching pricing are significant, possibly even insurmountable, and make such pricing unjustifiable. Furthermore, any suggestion that a successful differentiation can be made between peak/off peak interstate access tandem switching and the overall peak/off peak pattern of the tandem switch is simply impractical. The tandem carries other traffic, including local and intraLATA toll, which is an order of magnitude larger than its interstate access traffic; CWI submits that separation of these amounts for peak/off-peak purposes is impossible.

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<sup>18</sup> *Id.* at 42-53. Specifically, WilTel proposed that the adoption of the partitioned rate structure would require rules preventing ILECs from making tandem changes that reduced access traffic concentration further and that gave access customers an opportunity to force ILECs to make network rearrangements improving tandem concentration.

**E. The Transport Interconnection Charge Must Be Reduced and Ultimately Eliminated (¶¶ 96-122)**

The transport interconnection charge ("TIC") is a per-minute charge assessed on all interexchange minutes. As the Commission made clear when it established the current rate structure, the TIC's principal purpose was to maintain ILECs' revenue neutrality as regulation of transport moved away from the "equal charge per-minute" rule implemented as part of the AT&T consent decree.<sup>19</sup>

To the extent the TIC is, in fact, a method for ensuring ILEC revenue neutrality, CWI submits that its use is no longer appropriate in an environment in which actual competition in all telecommunications markets is to be fostered. The preservation of revenue neutrality is an anachronistic concept relevant only to monopoly markets and, if pursued, would tend to make the ILECs indifferent to access competition. Such indifference would weaken competition and thus be contrary to the public interest. Further, because competitive access providers ("CAPs") have made only marginal inroads into the ILECs' access monopolies at this time, continuation of the TIC would ensure the ILECs a revenue source and give them an unfair advantage over their competitors in both local exchange and long distance market segments.

CWI expects that, in response to the *Notice*, the ILECs will provide a candid assessment of what costs have been "allocated" to the TIC. As the *Notice* suggests, the costs recovered by the TIC may include, among others, tandem switching, SS7, LIDB, tandem switched transport, host-remote trunking, multiplexing, DTT, ILEC overhead, central office

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<sup>19</sup> *Local Transport Order*, 7 FCC Rcd at 7038.

equipment maintenance expenses, and circuit termination costs. (*Notice* ¶¶ 102-111.) CWI intends to examine the ILEC comments closely in this regard. Accordingly, CWI will make its principle comments on reforming the TIC in its reply. Nonetheless, CWI has some initial comments.

**1. Overhead (¶ 93)**

To the extent the TIC contains overhead costs, it would be appropriate to use this proceeding as an opportunity to equalize the overhead loading factors for all transport options, both DTT and TST. Such a result would be more competitively neutral than the current rate relationships, in which a proportionately larger amount of overhead is loaded on to TST, as the court found in *CompTel v. FCC*.<sup>20</sup>

In readjusting the overhead for the various types of transport, the FCC should ensure to the extent possible that all access customers pay the same *dollar amount* of overhead per unit of traffic as all others. The only way to do this, as *CompTel* demonstrated in its *Enforcement Petition* against BellSouth, is to make sure that the differences in rates between transport options (*i.e.*, DS3, DS1, TST) are equal to the differences in long run incremental cost of the various options.<sup>21</sup> By contrast, an equal overhead *percentage* per unit cost will put an additional, disadvantageous burden on smaller IXCs, such as CWI, that proportionately use more tandem switched transport.

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<sup>20</sup> *CompTel v. FCC*, 87 F.3d 522, 533 (D.C.Cir. 1996); *Notice* ¶ 93.

<sup>21</sup> Application for Enforcement of Appendix B, Section (b)(2), and Section II(B)(3) of the Modification of Final Judgment and request for Expedited Treatment, Civil Action No. 82-0192(HHG) D.D.C. filed by the Competitive Telecommunications Association with the Antitrust Division on September 29, 1994 ("Enforcement Petition") at pp. 22-33.